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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,777	05/27/2004	Anthony A. Harrington	04-0306 (BOE 0487 PA)	3776
27256	7590	01/03/2006	EXAMINER	
ARTZ & ARTZ, P.C. 28333 TELEGRAPH RD. SUITE 250 SOUTHFIELD, MI 48034			HOLZEN, STEPHEN A	
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 01/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/709,777	HARRINGTON ET AL.	
	Examiner	Art Unit	
	Stephen A. Holzen	3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 22-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-21 and 35-50 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-21, 35-40, drawn to a transport system, classified in class 244, subclass 118.5.
 - II. Claims 22-34, drawn to deployable receptacle, classified in class 232, subclass 1R.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the deployable receptacle requires that the tray store an object when the tray is in the storing position, a limitation not required by the combination. The subcombination has separate utility such as a deployable receptacle in a boat.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation between W. Eldred and Vincent Ilagan on 12/12/2005 a provisional election was made without traverse to prosecute the invention of group I, claims 1-21, 35-40. Affirmation of this election must be made by applicant in replying to this Office action. Claims 22-34 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention. Upon election the case was transferred to the docket of S. A. Holzen.

Claim Objections

5. Claims 1-21 and 35-40 are objected to because of the following informalities:
- Applicant is not using the appropriate language for Markush groups. The applicant has used the language "at least one of". The examiner has viewed this limitation as a Markush group, however the applicant has not used the proper Markush group language (the group consisting of....). If the applicant actually intended to claim at least one of EACH element the applicant rephrase the claim to specifically claim the combination of each of these elements. If the applicant meant to claim only one element from the group the applicant is required to use proper Markush language.

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- Claim 3, Line 2: the phrase "member is a selected" should be --member is selected--.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Rezag et al (5,074,496). Rezag et al discloses a upper and lower cabin having a single gantry-lifting device (see Figure 3) having an object carrier (9E₁), said object carrier having at least one restraint member (the locking plates), said device having a "lift device" (9E), where the device can carrier a galley cart along three separate axis. Rezag et al inherently disclose a "gear mechanism" of some sort. But not for a gear type mechanism, the lift-gantry device would not be operable.

Re – Claim 2: Applicant should appreciate that the lower deck is considered a "main galley deck" since (1) it qualifies as a deck (2) houses and receives the majority of the galley carts. The main passenger cabin qualifies as the "upper cabin" since it is a cabin that is above the "main galley deck"

Re – Claim 5: Applicant merely claims that the device is manually operable. The examiner asserts that while Rezag is essentially controlled by a computer, the control unit is manually programmable and therefore the examiner

asserts that the device is broadly “manually operative”; although no more “manual labor” is used than to program the control unit.

Re – Claim 6: Rezag et al discloses an unloading element as illustrated in Figures 11-13)

It should be appreciated that the applicant’s functional language in the claims do not serve to impart patentability. While features of an apparatus may be recited either structurally or functional, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. Apparatus claims cover what a device is, not what a device does. A claim containing a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus if the prior apparatus teaches all the structural limitation of the claims. In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d, 1429, 1431-2 (Fed. Cir. 1997); Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990); Ex parte Masham, 2 USPQ 2d 1647 (Bd. Pat. App. & Inter. 1987).

8. Claims 35-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Rezag et al (5,074,496). Rezag discloses a system for supplying galley carts to a main passenger cabin from a lower main galley cabin via a controllable automatic device provided in the baggage compartment of the aircraft and cable of seizing each of the galley carts in the container by a gripping means. The control unit is “manual” in as

much as it is programmable by a human. Figure 3 illustrates that the lifting gantry device is capable of operating in any of the three dimensions and that carts are arranged such that they can be moved and aligned in any direction. (See Col. 5, lines 18-21, 26-29, 36-39, 47-53; Col. 6, lines 19-24, 31-33; Col. 9, lines 25-27; Figures 3 and 15a-c).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rezag in view of Sankrithi (6,305,643). Rezag discloses every aspect of the present invention as described above except wherein a person can move between the upper and lower cabins via a ladder. Sankrithi discloses that it is known to install a ladder within the shaft of the lift and gantry device such that one can enter the main galley cabin. It would have been obvious to one having ordinary skill in the art, at the time the invention was made to employ the ladder of Sankrithi in the device of Rezag in order to allow maintenance within the main galley cabin.

Double Patenting

11. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

12. Claims 1-21 and 35-40 rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-29 of U.S. Patent No. 6,971,608.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the instant application are broader than the claims of the patent. The patent claims all the same elements as the instant application. It should be noted that the functional limitations of the present application do not differentiate the current application over the applied patent since apparatus claims must be differentiated by structure and not by function.

Allowable Subject Matter

13. Claims 8-21 would be allowable if the applicant can overcome the Double Patenting rejection.

14. Rezag does not disclose a single bi-level galley module having two sub modules with a ladder between, and the upper module having a walkway along the upper sub module, with the storage area disposed adjacent to the walkway and wherein the storage area is actually above the walkway.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen A. Holzen whose telephone number is 571-272-6903. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read 'TERI PHAM LUU', with a horizontal line extending to the left.

TERI PHAM LUU
SUPERVISORY
PRIMARY EXAMINER